Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	
	)	
Regulations Governing the NECA Board of Directors under Section 69.602 Of the Commission's Rules	)	CC Docket No. 01-174
	)	
And	)	
	)	
Requirements for the Computation of Average Schedule Company Payments Under Section 69.606 of the Commission's Rules	)	
	)	

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above captioned proceeding.[1] The Commission seeks comment on a proposal to amend Section 69.602 of its rules, which establishes the election requirements governing the National Exchange Carrier Association (NECA) board of

[1] 2000 Biennial Regulatory Review -- Requirements Governing the NECA Board of Directors under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Company Payments under Section 69.606 of the Commission's Rules, *Notice of Proposed Rulemaking,* CC Docket No. 01-174, FCC 01-218, (rel. August 31, 2001). (Notice, NPRM)

directors. The Commission also seeks comment on a series of proposals to revise and streamline the average schedule formula process, which is governed by Section 69.606 of its rules.

OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). Approximately 35 percent of OPASTCO's members receive their interstate settlements based on NECA's average schedule formulas.

OPASTCO believes that the Commission should eliminate its requirements regarding election intervals for NECA's board of directors. Nevertheless, OPASTCO encourages NECA to establish three-year terms for the "subset" members of the board, and that the terms be staggered within each subset. OPASTCO also supports the proposals made by NECA to simplify the average schedule formula development and approval process. NECA's proposed revisions would greatly reduce the complexity of the rules and processes associated with these formulas, thereby reducing the highly disproportionate resource burdens currently placed on average schedule companies and NECA.

II. THE COMMISION SHOULD NO LONGER REGULATE HOW NECA CONDUCTS ELECTIONS FOR ITS BOARD OF DIRECTORS

The Commission should eliminate its rules under Section 69.602, which require all NECA board members to stand for election each year. As the Commission correctly notes, NECA is a non-stock membership company incorporated in the State of Delaware and, under

Delaware law, an annual election for the board of directors is not required.[2] There is no reason why NECA should not have the same flexibility to elect its board as other private corporations do, within the confines of Delaware law. Elimination of the Commission's annual election requirement would have no impact on member company representation, since the number of directors representing each subset would remain unchanged.

Nevertheless, OPASTCO believes that NECA -- on its own accord -- should establish three-year, staggered terms for members of each subset of the NECA board. This extension of term lengths would result in a reduction of the financial and time burdens associated with the candidates' campaigns. And, as the Commission correctly notes, a three-year term length would be the same term appointment as the directors that serve on the Universal Service Administrative Company's (USAC) board.[3] Additionally, staggered terms within each of the board subsets would provide for stability and continuity within the NECA board, by ensuring that a complete turnover of directors -- overall or within a given board subset -- could not take place during a single election cycle.

III. THE COMMISSION SHOULD SUBSTANTIALLY SIMPLIFY THE AVERAGE SCHEDULE FORMULA DEVELOPMENT AND APPROVAL PROCESS, AS PROPOSED BY NECA

OPASTCO strongly concurs with the Commission that the resources devoted to the development and review of the average schedule formulas are highly disproportionate to both the size of the companies involved and to the relatively small percentage of revenues they receive from the NECA pools.[4] To begin with, the formula development process is burdensome for the over 100 average schedule companies who must collect and submit

[2] *Ibid.*, para. 4.
[3] *Id.*, para. 5.
[4] *Id.,* para. 12.

extensive cost and demand information to NECA annually. In addition, the Commission correctly states that the present complexity of the process leads to unnecessary administrative costs that are ultimately passed on to customers in their rates.[5]

Just as onerous is the Commission's annual review of NECA's proposed revisions to the average schedule formulas. In no other case does the Commission require annual approval for any individual components of a carrier's tariff revenue requirement. Certainly, the present complexity of the average schedule development and approval process is out of synch with the Commission's own reform and simplification efforts for incumbent local exchange carriers (ILECs) that file outside of the NECA process.[6]

For this reason, OPASTCO wholeheartedly supports the simplified approach to the average schedule formula development and approval process proposed by NECA, outlined below:

- Rather than continuing to regulate the manner in which each individual average schedule formula is developed, the Commission would specify procedures for adjusting <u>overall</u> formula levels, based on year to year changes in demand and revenue characteristics of representative cost companies.

- Individual formula revisions would no longer be filed routinely as there would be no need for the Commission to review individual formula settlement levels so long as total revenue requirement changes are equivalent to representative cost company changes. NECA would retain the flexibility to adjust the structure of the formulas as needed (e.g. in order to account for the effects of any changes in network technology or the offering of new services).

- There would be no need for the Commission to apply any additional elements, such as productivity factors, to the average schedule formula development process. Commission rules do not apply any productivity adjustments to cost companies. Therefore, such an addition for average schedule companies alone would not result in an accurate "simulation" of cost company payments.[7]

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[5] *Id.,* para. 15.
[6] *Id.,* para. 12.
[7] Furthermore, it is not feasible to develop a productivity factor that accurately reflects the true efficiency levels of rural, non-price cap local exchange carriers, given their diversity, number, and small size.

- Similar simplification can be applied to the universal service formulas. The Local Switching Support formula can be developed by adjusting support in proportion to changes in the support factors of representative cost companies. The development process for the High-Cost Loop formula can also be simplified by adjusting high-cost loop revenue requirements in accordance with the percentage change in high-cost loop revenue requirements experienced by representative cost companies.

- The Commission should revise Section 69.606(a) of its rules to eliminate the requirement that NECA's average schedule formulas be "approved" each year by the Commission. Instead, the Commission would consolidate review of the average schedules as part of NECA's annual access tariff filings.

Any benefit from the present rules is greatly outweighed by the significant costs and burdens to all parties, and is clearly no longer in the public interest. Therefore, NECA's proposed approach would allow the Commission to "reduce unnecessary regulatory burdens on the industry, including small entities," while also revising its rules to better reflect the dynamic present within today's telecommunications marketplace.[8]

IV. REGULATORY FLEXIBILITY ANALYSIS

The Commission certified that the rules proposed in the NPRM "will not have a significant economic impact on a substantial number of small entities."[9] This certification appears to apply only to Section II of the NPRM, which discusses NECA operational issues. However, Section III addresses average schedule formulas, which can have a profound impact on the ability of small, rural telecommunications carriers to offer services to all customers in their service areas.

For example, the NPRM seeks comment on the possible introduction of productivity factors.[10] Productivity factors may be appropriate for large local exchange carriers (LECs) that can achieve great economies of scale, but there is serious doubt as to their applicability to

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[8] NPRM, para. 1.
[9] *Ibid.,* para. 28.
[10] *Id.,* para. 21.

rural LECs. Any regulatory flexibility analysis should demonstrate how proposed rules will avoid undue economic burdens for small entities.

The Commission recognizes that small ILECs are "small entities" for the purposes of regulatory flexibility analyses.[11] Considering the vital role small telecommunications carriers play in achieving the goal of providing service in high-cost areas, it is especially important for the Commission to consider the economic impact that proposed regulations might have. Accordingly, the Commission's certification that the proposed regulations will not have a significant economic impact on a substantial number of small entities is, at best, premature.

V. CONCLUSION

OPASTCO recommends that the Commission revise Section 69.692 of its rules to eliminate the annual election requirement for all of NECA's board members. No additional regulation is required other than that provided under Delaware law. However, OPASTCO encourages NECA to establish three-year staggered terms for its subset board members. OPASTCO also believes that Section 69.606 of the Commission's rules should be streamlined, as proposed by NECA, in order to reduce the disproportionate administrative burdens imposed by the current average schedule formula development and approval process. Such a change would also provide NECA with greater flexibility to adapt the

[11] The Commission has acknowledged small ILECs as "small entities" for Regulatory Flexibility Act purposes since August, 1999; *see Access Charge Reform et. al. Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd at 14350-51, para. 262.

average schedule formulas to rapidly changing market conditions and would be in the public interest.

Respectfully submitted,

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